

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case Nos.: <b>05-O-02960-PEM</b>
	)	(05-O-03417; 05-O-03418;
<b>PATRICK ESMAEL SAFFARIAN,</b>	)	05-O-03655; 05-O-04188;
	)	05-O-04824; 05-O-04867)
<b>Member No. 217520,</b>	)	
	)	<b>DECISION AND ORDER SEALING</b>
A Member of the State Bar.	)	<b>CERTAIN DOCUMENTS</b>
	)	
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**I. INTRODUCTION**

In this disciplinary proceeding, respondent Patrick Esmael Saffarian (“respondent”) was accepted for participation in the State Bar Court’s Alternative Discipline Program (“ADP”). As the court has now found that respondent has successfully completed the ADP, the court will recommend to the Supreme Court that respondent be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that he be placed on probation for three years subject to certain conditions, including a 75-day period of suspension.

**II. PERTINENT PROCEDURAL HISTORY**

In February 2006, respondent contacted the State Bar’s Lawyer Assistance Program (“LAP”) to assist him with his substance abuse issue. On August 16, 2006, respondent signed a LAP Participation Plan.

On January 29, 2007, the State Bar of California's Office of the Chief Trial Counsel ("State Bar") filed a Notice of Disciplinary Charges ("NDC") against respondent in Case Nos. 05-O-02960 (05-O-03417; 05-O-03418; 05-O-03655; 05-O-04188; 05-O-04824; 05-O-04867). Respondent sought to participate in the State Bar Court's ADP. On March 20, 2007, this matter was referred to the ADP.

On October 1, 2007, respondent submitted a declaration to the court, which established a nexus between respondent's substance abuse issue and the charges in this matter.

The parties entered into a Stipulation Re Facts and Conclusions of Law ("Stipulation") in September 2007. The Stipulation set forth the factual findings, legal conclusions and mitigating and aggravating circumstances involved in Case Nos. 05-O-02960 (05-O-03417; 05-O-03418; 05-O-03655; 05-O-04188; 05-O-04824; 05-O-04867).

Following briefing by the parties, the court issued a Confidential Statement of Alternative Dispositions and Orders dated October 29, 2007, formally advising the parties of: (1) the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP; and (2) the discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to those alternative dispositions, respondent and his counsel executed the Contract and Waiver for Participation in the State Bar Court's ADP; the court accepted respondent for participation in the ADP; and respondent's period of participation in the ADP began on October 29, 2007.

On May 18, 2010, the court issued an order enrolling respondent as an inactive member of the State Bar pursuant to Business and Professions Code section 6233.<sup>1</sup> This order was effective that same day.

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<sup>1</sup> All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

On July 27, 2010, the court issued an order granting respondent's request to terminate his involuntary inactive enrollment pursuant to section 6233 and return to active status. Respondent was entitled to resume the practice of law in this state on August 1, 2010.

Respondent participated successfully in both the LAP and the State Bar Court's ADP. On August 30, 2010, after receiving a Certificate of One Year of Participation in the LAP - Substance Use, the court filed an order finding that respondent has successfully completed the ADP.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The parties' Stipulation, including the court's order approving the Stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. Respondent stipulated, in five<sup>2</sup> disciplinary matters, to the following violations:

- Rule 3-110(A) of the Rules of Professional Conduct of the State Bar of California<sup>3</sup> in four matters [failing to perform with competence];
- Section 6068, subdivision (m), in four matters [failing to inform the client of significant developments];
- Rule 3-700(D)(2) in four matters [failing to promptly refund unearned fees];
- Section 6068, subdivision (i), in three matters [failing to cooperate in a disciplinary investigation];
- Section 6068, subdivision (m), in two matters [failing to respond to client inquiries];
- Section 6103 in two matters [failing to obey a court order];
- Rule 3-700(A)(2) in two matters [improper withdrawal]; and
- Section 6068, subdivision (o)(3), in one matter [failure to report judicial sanctions].

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<sup>2</sup> The Stipulation included the dismissal of Case Nos. 05-O-04867 and 05-O-03655.

<sup>3</sup> Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

In aggravation, respondent's misconduct evidences multiple acts of wrongdoing to multiple clients. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(ii).)<sup>4</sup> In addition, respondent's misconduct caused significant harm to the civil courts and his clients. (Std. 1.2(b)(iv).)

In mitigation, respondent was candid and cooperative with the State Bar and made full restitution to one of his clients. (Std. 1.2(e)(v).) In addition, respondent successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program - Substance Use, qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse issue which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Std. 1.2(e)(iv).)

#### **IV. DISCUSSION**

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, preserve public confidence in the legal profession, and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.3, 1.4, 1.5, 1.6, 2.4(b), 2.6, and 2.10, and *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074; *Bernstein v. State Bar* (1990) 50 Cal.3d 221; *Rose v. State Bar* (1989) 49 Cal.3d 646; *In the Matter of Bailey* (Review Dept. 2001)

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<sup>4</sup> All further references to standard(s) or std. are to this source.

4 Cal. State Bar Ct. Rptr. 220; *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229; and *Chefsky v. State Bar* (1984) 36 Cal.3d 116.

Because respondent has now successfully completed the ADP, this court, in turn, now recommends to the Supreme Court the imposition of the lower level of discipline, set forth more fully below, contained in the Confidential Statement of Alternative Dispositions and Orders.

## V. DISCIPLINE

It is hereby recommended that respondent **Patrick Esmael Saffarian**, State Bar Number 217520, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that he be placed on probation<sup>5</sup> for a period of three years subject to the following conditions:

1. Respondent Patrick Esmael Saffarian is suspended from the practice of law for 75 days (with credit given for inactive enrollment, which was effective May 18, 2010 through July 31, 2010 (Bus. & Prof. Code § 6233.)).
2. Respondent Patrick Esmael Saffarian must also comply with the following additional conditions of probation:
  - a. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
  - b. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (“Office of Probation”), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
  - c. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent’s assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;

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<sup>5</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

- d. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of the probation period;

- e. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;
- f. Within one (1) year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session;
- g. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription;
- h. Unless respondent has been terminated from the Lawyer Assistance Program (“LAP”) prior to respondent’s successful completion of the LAP, respondent must comply with all provisions and conditions of respondent’s Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent’s participation in the LAP and respondent’s compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition; and
- i. Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund (“CSF”) has reimbursed one or more of the payee(s) for all

or any portion of the principal amount(s) listed below, respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

<b>Payee</b>	<b>Principal Amount</b>	<b>Interest Accrues From</b>
Karen Quesada	\$3,500	December 1, 2004 @ the rate of 10% per annum
Alaine Van Ness	\$5,500	May 1, 2003 @ the rate of 10% per annum
Joanne Rosso	\$5,112.50	April 1, 2005 @ the rate of 10% per annum
Kenneth Prochnow	\$1,203.35	April 1, 2005 @ the rate of 10% per annum

Respondent must pay the above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than the end of his probationary period.

Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation, respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

<b>Payee/CSF (as applicable)</b>	<b>Minimum Payment Amount</b>	<b>Payment Frequency<sup>6</sup></b>
Karen Quesada	\$75	The 15 <sup>th</sup> of every month
Alaine Van Ness	\$100	The 15 <sup>th</sup> of every month
Joanne Rosso	\$100	The 15 <sup>th</sup> of every month
Kenneth Prochnow	\$50	The 15 <sup>th</sup> of every month

To the extent that respondent has paid any fee arbitration award prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payments provided satisfactory proof is shown to the Office of Probation.

The court, in its discretion, may order or recommend the continuation or modification of any restitution payment schedule.

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<sup>6</sup> Pursuant to the Stipulation, respondent began making payments in January 2008. To the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payments provided satisfactory proof is or has been shown to the Office of Probation.

At the expiration of the period of probation, if Patrick Esmael Saffarian has complied with all conditions of probation, the one-year period of stayed suspension will be satisfied and that suspension will be terminated.

It is also recommended that Patrick Esmael Saffarian take and pass the Multistate Professional Responsibility Examination (“MPRE”) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the State Bar’s Office of Probation in Los Angeles, within one year after the effective date of the discipline herein. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 9.10(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).)

## **VI. COSTS**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

## **VII. DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS**

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure of the State Bar of California (“Rules of Procedure”), all other documents not previously filed in this matter are ordered sealed pursuant to rule 23 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized

individuals in a manner calculated to prevent improper disclosures. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

**IT IS SO ORDERED.**

Dated: November \_\_\_\_\_, 2010

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PAT McELROY  
Judge of the State Bar Court